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State v Navarrete Appellant's Brief Dckt. 43758

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ERIC D. FREDERICKSEN
Interim State Appellate Public Defender
I.S.B. #6555

REED P. ANDERSON
Deputy State Appellate Public Defender
I.S.B. #9307
P.O. Box 2816
Boise, ID 83701
(208) 334-2712

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43758
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR 2009-19811
v.)	
)	
CARLOS MALVIN NAVARRETE,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Carlos Malvin Navarrete appeals from the district court's order denying his Idaho Criminal Rule 35 motion (*hereinafter*, Rule 35) for correction of an illegal sentence. Mr. Navarrete asserted that his life sentence, with 30 years fixed, violated the terms of I.C. § 19-2513. Mindful of the Idaho Court of Appeals recent decision in *State v. Meier*, 2016 Opinion No. 4 (Ct. App. January 14, 2016), Mr. Navarrete asserts that the district court erred when it denied his motion.

Statement of the Facts & Course of Proceedings

In 2010, Mr. Navarrete was found guilty of second degree murder with an enhancement for the use of a firearm. (R., p.17.) The district court imposed a sentence of life, with 30 years fixed. (R., p.17.) In 2014, Mr. Navarrete, acting *pro se*, filed a Rule 35 motion asserting that his sentence was illegal. (R., pp.10-16.)

Mr. Navarrete argued that his sentence was illegal because I.C. § 19-2513(2) states, “If the offense carries a mandatory minimum period as provided by statute, the court shall specify a minimum period of confinement consistent with such statute.” (R., p.11.) Based on that language, he argued that, because second-degree murder carried a mandatory minimum sentence of 10 years, the language of I.C. § 19-2513 mandated that the district court impose a 10-year sentence. (R., p.11.)

The district court denied the motion. (R., pp.17-20.) It held that the sentence was not illegal because I.C. § 19-2513 “does not limit the court’s discretion in specifying only a minimum or ‘fixed’ or ‘determinate’ sentence provided in the second degree murder statute. In fact, that minimum or ‘fixed’ sentence can be up to the maximum punishment available for that crime.” (R., p.19.) Thus, it said, I.C. § 19-2513 “only limited the court’s discretion to giving a unified sentence of at least ten years.” (R., p.19.) It also held that Mr. Navarrete had not shown that his sentence was illegal from the face of the record as his sentence was within the statutory maximum. (R., p.19.)

Thereafter, Mr. Navarrete filed a Motion to Reconsider Order Denying Motion to Correct an Illegal Sentence. (R., pp.22-28.) The district court later dismissed the motion holding that it was untimely. (R., p.30.) Mr. Navarrete then filed a Notice of

Appeal that was timely from the district court's order dismissing his motion to reconsider. (R., pp.31-35.)

ISSUE

Did the district court err when it denied Mr. Navarrete's Rule 35 motion to correct an illegal sentence?

ARGUMENT

The District Court Erred When It Denied Mr. Navarrete's Rule 35 Motion To Correct An Illegal Sentence

A motion to correct an illegal sentence may be brought at any time. See I.C.R. 35(a). Mr. Navarrete based his argument on I.C. § 19-2513. Section 19-2513(2) states, in relevant part, "[i]f the offense carries a mandatory minimum penalty as provided by statute, the court shall specify a minimum period of confinement consistent with such statute." I.C. §19-2513(2). Mr. Navarrete argued that because second-degree murder is a crime that carried a mandatory minimum penalty, I.C. § 19-2513 required that the district court impose only the mandatory minimum of ten years. (R., pp.11-12.)

In *State v. Meier*, 366 P.3d 197 (Ct. App. 2016), review denied (Feb. 11, 2016), the Court of Appeals considered a similar argument. Mr. Meier relied on I.C. § 19-2513(2), along with I.C. 19-2514, to argue that the district court imposed an illegal sentence when it imposed a sentence that violated the statutory limits. *Id.* at 198. The Court of Appeals said, "Meier cites to a single sentence within I.C. § 19-2513(2) to support his assertion: 'If the offense carries a minimum penalty as provided by statute, the court *shall* specify a minimum period of confinement consistent with such statute.'" *Id.*

The Court went on to say,

In sum, Section, 19-2514, sets the outer limits of a permissible sentence for a persistent violator (five years to life); Section 18-107 gives the court authority to impose a sentence anywhere within those outer limits; and Section 19-2513 confers discretion upon the court to determine what portion (or all) of the sentence is determinate or indeterminate. Thus, a court may impose a sentence of any duration between five years and life, and the court can distribute that sentence between a determinate term and indeterminate term at its discretion.

Id.

In this case, instead of relying on the five-year minimum in I.C. § 19-2514, Mr. Navarrete relied on the 10-year minimum sentence for second-degree murder. (R., p.11; See I.C. § 18-4004.) Mindful of the analysis in *Meier*, Mr. Navarrete nevertheless argues that the district court erred when it denied his Rule 35 motion.

CONCLUSION

Mr. Navarrete respectfully requests that the district court's order denying his motion to correct an illegal sentence be reversed.

DATED this 5th day of July, 2016.

_____/s/_____
REED P. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 5th day of July, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

CARLOS MALVIN NAVARRETE
INMATE #63237
ISCI
PO BOX 14
BOISE ID 83707

DARLA S WILLIAMSON
DISTRICT COURT JUDGE
E-MAILED BRIEF

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

RPA/eas